

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DEMARCO HUBBARD,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-12-869-M
)	
LESTER ROBERISON and)	
SHEILA VAUGHN,)	
)	
Defendants.)	

Report and Recommendation

In this action under 42 U.S.C. § 1983, a state prisoner (Demarco Hubbard) complains about two missed meals. On screening, I recommend dismissal of the action because it is frivolous.

Screening for frivolousness is required because Mr. Hubbard appears *in forma pauperis* and is a prisoner suing over prison conditions.¹ The suit is considered *frivolous* if it lacks arguable factual or legal support.² Such support is lacking here.

Under Section 1983, the Plaintiff must plead facts that suggest a constitutional violation.³ In the complaint, Mr. Hubbard alleges only that he was denied two meals fifteen

¹ See Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(i), 42 U.S.C. § 1997e(c)(1) (2006).

² See *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (stating that a complaint with factual allegations and legal conclusions “is frivolous where it lacks an arguable basis either in law or in fact”).

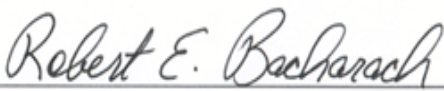
³ See *Jenkins v. Currier*, 514 F.3d 1030, 1032-33 (10th Cir. 2008).

days apart. This allegation does not suffice for a constitutional violation,⁴ and the Court should summarily dismiss the action.

The parties have a right to object to this report and recommendation by December 27, 2012.⁵ If Mr. Hubbard does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The absence of a timely objection would waive Mr. Hubbard's right to review by the Tenth Circuit Court of Appeals.⁶

This report discharges the referral.

Entered this 10th day of December, 2012.


Robert E. Bacharach
United States Magistrate Judge

⁴ See *Scott v. Ritter*, CIV-11-540-R, slip op. at 10-11 (W.D. Okla. Feb. 2, 2012) (unpublished op.; magistrate judge's report, holding that deprivation of a single meal was not sufficiently serious to constitute a violation of the Eighth Amendment), *adopted*, Order at 3 (W.D. Okla. Mar. 7, 2012) (unpublished op.); see also *Bridgeforth v. Ramsey*, 198 F.3d 257, 1999 WL 992978, Westlaw op. at 2 (10th Cir. Nov. 2, 1999) (unpublished op.) (affirming the district court's dismissal of an inmate's Eighth Amendment claim based on the deprivation of a single meal, holding that the allegations were "not sufficiently grave to warrant relief"); accord *White v. Gregory*, 1 F.3d 267, 269 (4th Cir. 1993) (holding that a prisoner's alleged limitation to two meals per day on weekends was frivolous because the denial of a third meal did not result in a serious or significant injury); *Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999) (stating that "[t]he magistrate judge [had] properly dismissed [the plaintiff's] section 1983 claim for missing eight meals . . . for failure to state a claim upon which relief [could] be granted").

⁵ See Fed. R. Civ. P. 6(d), 72(b)(2); 28 U.S.C.A. § 636(b)(1) (West 2011).

⁶ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).